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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,491	08/24/2001	Anthony Robin White	PH41	3293
26841 7	590 12/04/2002			•
MARK P. BOURGEOIS			EXAMINER	
P.O. BOX 95 OSCEOLA, IN 46561			MCCORMICK, SUSAN B	
			ART UNIT	PAPER NUMBER
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			DATE MAILED: 12/04/2002	ط

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Applicating Application							
Examiner Susan B. McComick - The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Examination of intermity are available under the provision of 3 TC PR. 1.58(a). In no event, however, may a reply be this divided to the provision of the provision o	Office Action Summary		Application No.	Applicant(s)			
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The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.13(d). In no event, however, may a ripty be timely filled. If the period for eight specified above is less has theiry (30 days, a reply within the statistory minimum of thinty (30) days, will be considered simely. If the period for eight specified above is less has theiry (30 days, a reply within the statistory minimum of thinty (30) days, a reply within the statistory minimum of thinty (30) days, a reply within the statistory minimum of the maining date of this communication. If the period for eight specified above is less than thirty (30) days, a reply within the statistory minimum of the maining date of this communication. If the period for eight specified above is less than thirty (30) days, a reply within the statistory minimum of the maining days and within the maining date of this communication. If the period for eight specified above is less than thirty (30) days, a reply within the above the maining days and the scanned part time adjustment. See 37 CFR 1.794(a). Status Responsive to communication(s) filled on 07 November 2002. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Queyle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) I is/are pending in the application. 4) Of the above claim(s) is/are objected to be priodice under Ex parte Queyle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) is/are objected to by the Examiner. Proliminary is/are projected. 7) Claim(s)			Examiner	Art Unit			
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THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be waited under the provision of 3 CFR i. 15(a). In no event, however, may a miply be timely filed after SX (6) MCNTIS from the mailing date of the communication. It is a start of the many be waited under the provision of the communication. If No provide or being is specified above, the maximum startory price within the statutory minimum multiple of the communication. Failure to reply within the set or extended period for reply well, by statute, cause the application to become ARANDONED (35 U.S.C. § 133). Any reply received by the Cffice terr than three monibal after the mailing date of this communication, even if timely filed, may reduce any semior patent term objustations. See 37 CFR 1.704(s). Status 1) Responsive to communication(s) filed on OT November 2002. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1 is/are pending in the application. 4a) Of the above claim(s) is a star withdrawn from consideration. 5) Claim(s) 1 is/are rejected. 7) Claim(s) 1 is/are rejected. 7) Claim(s) 1 is/are rejected. 8) The gravity of the drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or the drawing(s) be held in aboyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. 11 approved, corrected drawings are required in reply to this Office action. 12 Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(e) (to a provisional application). 3 Copies of the certified copies of th							
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Application/Control Number: 09/939,491

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Detailed Action

The response has been received and entered on November 7, 2002 as paper no. 5.

The text of those sections of Title 35, Code not included in this action can be found in the prior Office action.

35 U.S.C. 102

Response to Arguments

Applicant's arguments have been considered as they apply to the new grounds of rejection.

Applicant argues "the cited printed publication does not contain every element of the claimed invention." (page 2 of response). This argument is not persuasive because Applicant has admitted the sale of the claimed cultivar as early as 1998 in the United Kingdom and having obtained the plant, the skilled artisan would have been able to "make" the claimed invention by vegetative propagation of the purchased material, using methods well known in the art. Clearly, if an invention is on sale to the public, then the public must have possession of it. Thus the publication cited in the rejection in the prior Office action provides an enabling disclosure.

Because none of the arguments support Applicants' conclusion that a foreign breeder's right certificate over a year prior to domestic filing cannot be a bar under 35 USC § 102(b), even where Applicant made the plant stock available to the public, albeit outside this country, over a year prior to domestic filing, the applicability of a rejection, where both of these conditions arise, under 35 USC § 102(b) is maintained.

Summary

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

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is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick whose telephone number is (703) 305-1682. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax number for the group is (703) 305-3014 or 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Matrix Customer Service Center whose telephone number is (703) 308-0196.

sbm

BRUCE R. CAMPELL, PH.D SUPERVISORY PATENT EXAMINER TECHNOLOGY CENTER 1600

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